Civil Writ Petition No.1871-CAT of 2001.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH
...

Date of Decision: December 19 ,2007.

Krishan Chander **...** Petitioner

VERSUS

Union of India and others ... Respondents

CORAM : **HON'BLE MR.JUSTICE HEMANT GUPTA.**
HON'BLE MR. JUSTICE MOHINDER PAL.

1. Whether Reporters of Local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. S.S. Godara, Advocate,
for the petitioner.

Mr. Namit Kumar, Advocate,
for the respondents.

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MOHINDER PAL, J.

In this petition filed under Articles 226 / 227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari, thereby quashing the order dated February 10, 2000 (Annexure P-10) passed by the Central

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Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as `the Tribunal') whereby Original Application No.340-HR/91 filed by the petitioner was dismissed affirming the order dated July 19, 1990 (Annexure P-7) passed by the Senior Superintendent of Post Office, Karnal Division, Karnal (respondent No.3) removing the petitioner from service with immediate effect and the order dated October 30, 1990 (Annexure P-9) passed by the Postmaster General, Haryana Circle, Ambala (respondent No.2) dismissing the appeal of the petitioner against the order dated July 19, 1990 (Annexure P-7).

The petitioner was appointed as Extra Departmental Runner / Packer at Shamlo Kalan Post Office, where his duty, besides the normal duties of Packer, was to exchange the closed mail bags with D-4 Section of Railway Mail Services (R.M.S). While working as such, on May 02, 1980, at about 2.40 P.M, he received three bags including one despatched by Jind Head Post Office for Shamlo Kalan Post Office, from R.M.S Section at Jai Jaiwanti Railway Station, which he brought to Shamlo Kalan Post Office at about 4.30 P.M on the same date i.e May 02, 1980. The mail bag despatched by Jind Head Post Office was containing cash of Rs.4,000/- which was remitted to Shamlo Kalan Post Office by Jind Head Post Office, duly enclosed in a sealed leather cash bag kept in a sealed account bag. The petitioner opened all the mail bags and placed their contents before the Sub Postmaster, Shamlo Kalan Post Office. However,

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the account bag was not found from the mail bag. The Sub Postmaster, Shamlo Kalan, contacted the concerned official of Jind Head Post Office on phone to ascertain the fate of the account bag in question. He was informed that the account bag was duly despatched to his office by Jind Head Post Office through the mail bag on May 02, 1980, and that it was containing cash remittance of Rs.4,000/- and one unpaid article for Rs.1.10 P. Consequently, the Sub Postmaster, Shamlo Kalan Post Office, issued urgent telegrams on May 02, 1980 to the Senior Superintendent of Post Offices, Rohtak and Inspector Post Offices, East Sub Division, Jind, informing them about the non-receipt of the account bag and requesting necessary investigation into the matter.

Mr. K.L. Pasrija, who was Inspector of Post Offices, East Sub Division, Jind, at that time, started necessary investigation on May 03, 1980 in this regard. During investigation, the petitioner, in the first instance, showed his ignorance about receipt of the account bag from the mail bag. However, immediately thereafter, the petitioner made a statement on March 03, 1980 before Mr.K.L. Pasrija and Mr. Mahabir Singh, Sub Postmaster, Shamlo Kalan Post Office, admitting his guilt of taking out on May 02, 1980, the account bag containing cash remittance of Rs.4,000/- from the mail bag. On May 13, 1980, the petitioner again confessed his guilt of taking away the account bag in his statement recorded before the Senior Superintendent

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of Post Offices, Rohtak.

Vide order dated May 05, 1980, issued by the Senior Superintendent of Post Offices, Rohtak, the petitioner was ordered to be placed under put off duty with immediate effect and a criminal case was got registered against him as per First Information Report No.83 dated July 22, 1980, under Section 379 of the Indian Penal Code, at Police Station, Jullana. The police put up challan against the petitioner. He was acquitted by the Court of the Judicial Magistrate Ist Class, vide judgment dated June 01, 1983 (Annexure P-1), after giving him the benefit of doubt. Thereafter, the petitioner was dealt with departmentally and was served with a charge sheet dated May 26, 1989 (Annexure P-2). Inquiry was conducted against him by Mr.H.C. Atreja, Inquiry Officer, who vide his report dated June 15, 1990 found him guilty of the charge levelled against him. Copy of the inquiry report was sent to the petitioner by the Senior Superintendent of Post Office, Karnal vide his letter No.F-6/1/90 dated June 21, 1990 (Annexure P-5) asking him to submit his final defence by July 05, 1990. The petitioner submitted his reply dated July 12, 1990 (Annexure P-6). After considering his reply, the Senior Superintendent of Post Office, Karnal Division, Karnal (respondent No.3) passed the order dated July 19, 1990 (Annexure P-7) removing the petitioner from service with immediate effect. The petitioner preferred appeal against the order dated July 19, 1990 before the Postmaster General, Haryana

Circle, Ambala (respondent No.2), which was dismissed vide order dated October 30, 1990 (Annexure P-9). Still dissatisfied, the petitioner filed Original Application No.340-HR/01 before the Tribunal challenging the orders Annexures P-7 and P-9, which was dismissed vide the impugned order dated February 10, 2000 (Annexure P-10).

We have heard the learned counsel for the parties and have gone through the records of the case.

Learned counsel for the petitioner, during aguments, laid much emphasis on the point that the department failed to prove its case in the Criminal Court and the petitioner was acquitted by the Judicial Magistrate Ist Class, Jind, of the charge framed against him vide judgment dated June 01, 1983, whereas the departmental proceedings were initiated against him thereafter. According to him, the charge in a departmental case against the petitioner and the charge before the Criminal Court was same and that it would be unjust and unfair to allow the findings recorded in the departmental proceedings to stand. In support of his contention, he relied upon the cases reported as **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr., JT 1999 (2) SC 456** and **G.M. Tank v. State of Gujarat and another, 2006 (3) RSJ 554.** He further argued that the departmental proceedings were initiated against the petitioner after six years of his acquittal in the criminal case and on account of this inordinate delay in initiating the departmental

proceedings, he was prejudiced and the departmental proceedings were vitiated.

On the other hand, learned counsel for the respondents has argued that there was no legal bar in holding the departmental proceedings against the petitioner after his acquittal in the criminal case as the level of proof in both the proceedings is different and the purpose with which the departmental proceedings are conducted is also not identical with the purpose with which the criminal case is prosecuted for an offence committed by the employee. He further argued that the Tribunal considered all the points raised by the petitioner in his Original Application and after appraisal of the entire evidence, dismissed his claim vide the impugned judgment and that the order passed by the Tribunal does not suffer from any legal infirmity.

We have given our anxious consideration to the arguments raised by both the sides. There can be no dispute with the propositions of law enunciated in **Capt. M. Paul Anthony's case (supra)** and **G.M. Tank's case (supra),** but for the reasons to follow, the same are not applicable to the facts of the present case. In **Capt. M. Paul Anthony's case (supra),** the basis of action in both the cases, namely, the departmental proceedings and the criminal case, was the raid conducted by the Superintendent of Police at the residence of the appellant from where a recovery was also allegedly made. Since

the facts and the evidence in both the proceedings were the same without there being any iota of difference, the distinction between the departmental proceedings and the criminal case on the basis of approach and the burden of proof were not applicable in that case. Since the appellant in that case was acquitted in the criminal case and the proceedings were pending since the year 1985, the Court directed not to institute fresh departmental inquiry on the same set of facts. It may be mentioned here that the departmental proceedings against the appellant in the said case were conducted ex parte as the appellant was ill and could not attend the same. He had informed the respondents by a number of letters supported by medical certificates about his illness, but the Inquiry Officer rejected the request of the appellant for staying the departmental proceedings and await the result of the criminal case and recorded his findings on May 10, 1986, holding the appellant guilty. This was done despite the fact that when the appellant had approached the High Court, liberty was given to the respondents to stay the departmental proceedings if they considered it appropriate but they were directed to dispose of the appellant's appeal against the order by which he was placed under suspension. The order of High Court had no effect on the respondents and they decided to continue with the departmental proceedings which could not be attended by the appellant as he informed the Inquiry Officer that he was ill. The findings recorded by the Inquiry Officer were accepted by the

Disciplinary Authority and by order dated June 07, 1986, the appellant was dismissed from service. As during the pendency of the departmental proceedings, no subsistence allowance was paid to the appellant, it was held by the Apex Court that " we have to take strong notice of it, particularly as it is not suggested by the respondents that the appellant had any other source of income. Since in the instant case the appellant was not provided any subsistence allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of subsistence allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the Inquiry Officer at such proceedings, which were held ex parte, stand vitiated." As has been noticed above, the same is not the case here.

In **G.M. Tank's case (supra),** the Anti Corruption Bureau carried out an investigation against appellant G.M.Tak and submitted a report and on the basis of the said report, a charge sheet was issued alleging that the appellant illegally accumulated the excess income by way of gratification. The

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appellant submitted his explanation and denied the allegations as well as charges made in the charge sheet. A departmental inquiry was ordered and the appellant was found guilty of the charge. He was dismissed from service. Against the dismissal order, the appellant filed a writ petition, which was dismissed by a learned Single Judge holding that there was sufficient evidence against the appellant. He preferred L.P.A and raised the relevant contentions. The Division Bench dismissed the L.P.A by confirming the order of the learned Single Judge. In the criminal case against the appellant registered under the Prevention of Corruption Act, the Special Judge had honourably acquitted the appellant of the offence holding that the prosecution has failed to prove the charges levelled against the appellant. The acquittal was by way of complete exoneration and not by giving benefit of doubt, which was evident from the judgment of the Special Judge. In these circumstances, the Apex Court allowed the appeal by setting aside the judgment of the learned Single Judge as affirmed by the Division Bench in L.P.A.

In the present case, so far as the acquittal of the petitioner by the Court of Judicial Magistrate Ist Class vide judgment dated June 01, 1983 (Annexure P-1) is concerned, the same was not an honourable acquitted by way of complete exoneration, but was by giving benefit of doubt to him, as is evident from the following conclusion arrived at by the learned Magistrate:-

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> " Thus, from the foregoing discussion of mine, I have come to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and the benefit of doubt always goes to the accused, resultantly the accused is hereby acquitted from the charge under Section 379 I.P.C."

In our opinion, this order did not preclude the respondents from taking departmental action. The rules governing a criminal trial are so stringent that a delinquent official as an accused may get benefit of doubt and resultant acquittal, but that necessarily may not entitle him clearance in the departmental inquiry. It is well-settled that departmental proceedings can be continued even after acquittal of the delinquent in the criminal case and the disciplinary authority can pass appropriate order on the basis of evidence produced during the inquiry. The object of criminal trial is to inflict appropriate punishment on the offender/delinquent, while the purpose of departmental proceedings is to deal with the delinquent official in such a manner as to serve as a deterrent to other employees. In criminal trial, confession made by the accused before someone or before the superior officers is inadmissible in evidence against him, which is not the case in the departmental inquiry. The strict rules of evidence and procedure do not apply in departmental proceedings. The

degree of proof which is necessarily required in order to record a conviction against the accused is also different as compared to the punishment in departmental proceedings. However, the fact remains that merely because the delinquent has been acquitted, the power of the department to continue with the departmental proceedings is not taken away or in any way fettered to proceed against the accused departmentally. In the case of **State of Andhra Pradesh and others v. Sree Rama Rao**, AIR 1963 SC 1723, it has been held by the Apex Court that the report of the Inquiry Officer that the judgment of the Magistrate holding a criminal trial against a public servant could not always be regarded as binding in a departmental inquiry against that public servant was not suffering from any error. It was further held that the conclusions of the departmental officers were borne out from the evidence before them and the High Court has no jurisdiction to set aside the order either on the ground that the approach to the evidence was not consistent with the approach in a criminal case nor on the ground that the High Court would have on that evidence come to a different conclusion.

In view of what has been discussed above, we do not find any merit in the other argument of the learned counsel for the petitioner that there was a delay of about six years in initiating the departmental proceedings against the petitioner after he was acquitted by the Criminal Court and in this way he was prejudiced and the departmental proceedings were vitiated. In

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this case, First Information Report against the petitioner was lodged on July 22, 1980. He was acquitted by the trial Magistrate vide judgment dated June 01, 1983 (Annexure P-1). After pronouncement of judgment (Exhibit P.1), the petitioner, for the first time, approached the department for reinstatement by way of filing representation dated November 12, 1988 (Annexure R-3). In response to this representation, the department wrote letter dated November 30, 1988 (Annexure R-4) to the petitioner asking him to send a copy of the judgment passed by the trial Magistrate. Under these circumstances, no fault can be found with the department in initiating the departmental proceedings against the petitioner after getting from him the copy of the judgment rendered by the trial Magistrate.

Consequently, we uphold the impugned order dated February 10, 2000 (Annexure P-10) passed by the Tribunal and dismiss this petition with no order as to costs.

(HEMANT GUPTA)
JUDGE

(MOHINDER PAL)
JUDGE

December , 2007.
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